REMARKS

Claims 51-73 have been added and are hereby presented for examination.

In the outstanding Office action dated August 17, 2005, claim 61-73 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 28-40 of U.S. Patent No. 6,719,778. In response thereto, Applicants have submitted a Terminal Disclaimer. The Terminal Disclaimer disclaims the terminal part of the statutory term which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 6,719,778. It is believed that submitting such a Terminal Disclaimer operates to traverse the rejection of claims 61-73 under the judicially created doctrine of obviousness-type double patenting set forth in the outstanding Office action.

Additionally, in the outstanding Office action, claims 51-73 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite. In particular, the Examiner stated that the recitation of "inducing fibrosis" in claim 51 was believed to be a result of applying an agent in combination with energy and not a separate step in a method for strengthening tissue. The Examiner further stated that claim 51 would be interpreted to read as "applying an agent in combination with energy to the target region to induce fibrosis in a layer and, thereby strengthening the target tissue." With regard to claim 61, the Examiner suggested that increasing an adventitial area in the area of the target tissue is not a separate step in a method but rather, a result of administering an agent in applying energy to the target tissue. Thus, the Examiner interpreted claim 61 to read as "applying energy to the target tissue to react within the photoactivatable agent, to increase an adventitial area...tissue." Notably, the Examiner requested that the Applicants acknowledge whether or not the Examiner's interpretations of the claims were correct.

According to well established case law, the claims of a patent or patent application are ordinarily not limited in scope to the preferred embodiment. Moreover, it is well established in patent law that unless the steps or limitations of a method actually recite an order, they are not ordinarily construed to require one. Therefore, the Applicants hereby acknowledge that the Examiner's interpretations of claims 51 and 61 are correct, but the claims should not necessarily be limited to such interpretations in view of the above identified well established case law concerning the interpretation of method or process claims.

Thus, it is believed that both the double patenting and § 112 rejections have been traversed and pending claims 51-73 can be passed to issue.

CONCLUSION

In view of the above remarks, Applicants respectfully request that the application be reconsidered, the claims allowed and the application passed to issue.

Respectfully submitted,

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